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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2005-853

13 EDEN ALVARADO
14 1318 Alta Vista Dr.
Bakersfield, CA 93305
Vocational Nurse License No. VN 156206

A C C U S A T I O N

Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
19 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
20 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

21 2. On or about January 29, 1992, the Bureau of Vocational Nursing and
22 Psychiatric Technicians (Bureau) issued Vocational Nurse License Number VN 156206 to Eden
23 Alvarado (Respondent). The Vocational Nurse License was in full force and effect at all times
24 relevant to the charges brought herein. The license expired on June 30, 2007, and was not
25 renewed.

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JURISDICTION

3. This Accusation is brought before the Bureau under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Bureau may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

6. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 2878 of the Code states:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

...

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

8. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person

1 licensed under this chapter to do any of the following:

2 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
3 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
4 administer to another, any controlled substance as defined in Division 10 of the Health and
5 Safety Code, or any dangerous drug as defined in Section 4022.

6 "(b) Use any controlled substance as defined in Division 10 of the Health and
7 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
8 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
9 or to the extent that the use impairs his or her ability to conduct with safety to the public the
10 practice authorized by his or her license.

11 9. California Code of Regulations, title 16, section 2518.6(b)(4), states, in
12 pertinent part:

13 "(b) A licensed vocational nurse shall adhere to standards of the profession and
14 shall incorporate ethical and behavioral standards of professional practice which include but are
15 not limited to the following:

16 ...

17 "(4) Abstaining from chemical/substance abuse".

18 10. California Code of Regulations, title 16, section 2521, states:

19 "For the purposes of denial, suspension, or revocation of a license pursuant to
20 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
21 act shall be considered to be substantially related to the qualifications, functions or duties of a
22 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
23 licensed vocational nurse to perform the functions authorized by his license in a manner
24 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
25 limited to those involving the following:

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2 “(c) Violating or attempting to violate, directly or indirectly, or assisting in or
3 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2
4 of the Business and Professions Code.

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6 “(f) Any crime or act involving the sale, gift, administration, or furnishing of
7 ‘narcotics or dangerous drugs or dangerous device’ as defined in Section 4022 of the Business
8 and Professions Code.”

9 11. Section 11170 of the Health and Safety Code provides: “no person shall
10 prescribe, administer, or furnish a controlled substance for himself.”

11 12. CONTROLLED SUBSTANCES

12 a. Amphetamine is a Schedule II controlled substance as designated
13 in Health and Safety Code section 11055(d)(1) and is categorized as a dangerous drug pursuant
14 to section 4022 of the Code.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Commission of Acts Substantially Related to Licensure)

17 13. Respondent is subject to disciplinary action under California Code of
18 Regulations, title 16, section 2521, subdivisions (c) and (f), in that Respondent committed an act
19 substantially related to the qualifications, functions or duties of a licensed vocational nurse, as
20 follows:

21 a. On or about October 10, 2005, Respondent was terminated from his
22 employment as a Licensed Vocational Nurse with Maxim Healthcare Services, after testing
23 positive for amphetamines.

24 1.) The circumstances surrounding the incident are that on or about
25 October 7, 2005, in the course of his employment as a Licensed Vocational Nurse with Maxim
26 Healthcare Services, Respondent assisted a patient onto a school bus. After assisting the patient
27 onto the school bus, Respondent returned to his car to retrieve some items. Once at his car,
28 Respondent fell face down without attempting to brace his fall. As a result of the fall,

1 Respondent sustained significant injury to his face and was taken to the hospital for medical
2 attention.

3 After receiving medical attention, Respondent submitted to mandatory drug testing per
4 the employer's policy. The following Monday, October 10, 2005, Respondent was informed that
5 he had tested positive for amphetamines. According to the employer's Drug-Free Workplace
6 Policy, Respondent was then terminated.

7 A Bureau investigator conducted two interviews with Respondent as part of the Bureau's
8 investigation of the incident. During one of the interviews, Respondent admitted to the
9 investigator that he had ingested the drug methamphetamine while at a local bar with friends.
10 The investigator asked Respondent to provide a urine sample for drug testing during both
11 interviews. On both occasions, Respondent refused to provide urine samples stating that he had
12 been drinking alcohol.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 14. Respondent is subject to disciplinary action under section 2878,
16 subdivision (a) of the Code on the grounds of unprofessional conduct as defined in section
17 2878.5, subdivisions (a) and (b) for violating Health and Safety Code section 11170 in that
18 Respondent ingested a controlled substance, amphetamine, without authority, as more fully set
19 forth in paragraph 13, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Possession of Controlled Substance)

22 15. Respondent is subject to disciplinary action under sections 2878,
23 subdivision (a) on the grounds of unprofessional conduct, as defined in section 2878.5,
24 subdivision (a) for violating Health and Safety Code section 11170, in that Respondent
25 administered to himself a controlled substance, amphetamine, as more fully set forth in paragraph
26 13, above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Illegal Self-Administration of Drugs Posing Danger to Public and Impairment to Practice)

3 16. Respondent is subject to disciplinary action under section 2878,
4 subdivision (a) on the grounds of unprofessional conduct, as defined in section 2878.5,
5 subdivision (b) for violating Health and Safety Code section 11170, in that Respondent
6 administered to himself a controlled substance, amphetamine, in a dangerous manner that caused
7 injury to himself, as more fully set forth in paragraph 13, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Failure to Adhere to Ethical and Behavioral Standards of Practice)

10 17. Respondent is subject to disciplinary action under California Code of
11 Regulations, title 16, section 2518.6(b)(4), in that Respondent failed to adhere to the ethical and
12 behavioral standards of professional practice by abusing a controlled substance, amphetamine, as
13 more fully set forth in paragraph 13, above.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Vocational Nurse License Number VN 156206,
5 issued to Eden Alvarado.

6 2. Ordering Eden Alvarado to pay the Bureau the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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11 DATED: August 22, 2008
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14 TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Bureau of Vocational Nursing and Psychiatric Technicians
17 Department of Consumer Affairs
18 State of California
19 Complainant

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